American Federation of Television and Radio Artists ("AFTRA")

POSITION STATEMENT (ATTACHED)

November 10, 2010

Re: House Bill 5750 – Prohibiting Non-Compete Provisions in Broadcast Employment Agreements

Dear Representative:

I am writing on behalf of the members of the American Federation of Television and Radio Artists ("AFTRA") to urge you to pass HB 5750, which prohibits non-compete clauses in the personal services contracts of broadcast employees.

AFTRA is a national labor union representing over 70,000 professional performers, with over 500 members locally, many of whom work as news anchors, reporters, sportscasters, weathercasters and disc jockeys in network and local television and radio. Michigan broadcasters make up the faces you see and the voices you hear every day bringing you local news and entertainment on a daily basis, and need your help in ensuring their freedom to work in the state continues.

As HB 5750 is scheduled for a vote tomorrow, November 10, 2010, we urge you to please vote "**YES**" in passing this legislation on behalf of the hundreds of Michigan broadcasters who need your support now more than ever.

Enclosed is a summary position of why you should your support in passing HB 5750 to outlaw the use of non compete provisions in this industry.

Sincerely yours,

Lorain Obomanu

Lorain Obomanu
Executive Director

Enclosure

Pass HB 5750 Prohibit Michigan Broadcasters Non-Competes

The Issue

- The Broadcast Industry in Michigan inserts ***boilerplate, non-negotiable clauses*** in virtually every local station employment contract.
- Non-compete clauses provide an employer with an automatic right of first refusal and prohibit broadcast employees right to work at another station in the market (which can include the entire state or a number of states) from ***6 months up to one year***.
- Non-compete provisions ***artificially compress wages and impede the free negotiation*** of broadcast employment contracts. These restrictions remain in effect regardless of whether the employer terminates the broadcaster as a result of layoffs due to staff reductions and format changes. Additionally, the broadcast employee is bound to a non-compete where the employer refuses to negotiate a new contract upon the expiration of the employment agreement, imposes a salary reduction or even terminates an employment agreement before its expiration. For example, where a contract provides a 3 year term with an "option" to terminate the broadcast agreement every 12 months, an employer can exercise an "option" before the expiration of the contract, and effectively prevent the broadcast employee from working in the market until the restrictive covenant runs. Broadcast employment contracts also include a right of first refusal for employers. When the right-of-first refusal and the non-compete is invoked, it prevents the broadcast employee from seeking employment and negotiating a fair market wage. Prior to the expiration of the employment contract, the broadcast employee must disclose other offers from prospective employers to grant the employer the right-of-first refusal (where the employer only needs to match it or offer a slightly better deal to prohibit the broadcast employee from accepting another employment offer). The broadcast employee is then forced to either remain with the station for a lower-than-market offer or uproot their families to find work outside of Michigan.

What Would This Bill Do?

- This legislation would make it unlawful for a broadcast industry employer to enforce a "non-compete" contract clause against a former employee. It would also ban "first refusal" provisions, which often act as de facto non-compete clauses when the period of first refusal extends beyond the term of an employment contract.
- As employers traditionally require broadcast employees to agree to non-compete clauses in employment contracts, it is almost impossible to negotiate a non-compete clause out of broadcast employee's contracts. Around the country, the only way ***to protect competition and the free market*** is for the state legislature to ban the practice, as passed in New York, Illinois, and four other states including the District of Columbia.

Why This Restriction Should Not Apply to This Industry

- Non-competes serves no legitimate business interest. Broadcast Employees Do Not Possess "Trade Secrets" or other "Confidential Information."
- Non-Competes Are Not Necessary to Protect a Broadcast Employer's "Investment" In Talent. The "investment" employers argue that they make in employees is really *only their advertising expenses, which are simply a cost of doing business*.
- Broadcast employers have other methods available to protect their interests, without eliminating competition and preventing former employees from working. These include (1) signing talent to longer term contracts; and (2) "exclusive negotiation" rights, which prohibit employees from negotiating with another employer for a period of time before their contract expires.
- Courts will generally strike down non-competes when challenged by non-confidential employees such as broadcast employees; however it is not a time or cost effective solution.
- Non-compete clauses have long been prohibited in the major broadcast areas, such as California, New York and Washington D.C., with no adverse effects to the major, thriving, and competitive broadcast markets. ABC/Disney, Viacom/CBS, GE/NBC, Clear Channel and other large companies—operate very successfully and competitively in these jurisdictions.

For more information, contact: **American Federation of Television and Radio Artists, Detroit Local**
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